



South Orange County Wastewater Authority

AM 7/5
Mike Mc Conn
ple set for coordination
ple advise on SEP 6/10/05

June 30, 2005

Mr. John H. Robertus, Executive Officer
C/O Compliance Assurance Unit
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

RE: POTW: 01-0175.01:kellb
Complaint No. R9-2005-0124

Dear Mr. Robertus,

We are in receipt of your corrected complaint, dated June 17, 2005, relative to effluent violations which occurred at our SOCWA San Juan Creek Ocean Outfall on January 9, 2005. In accordance with the instructions in your letter, we are also enclosing the executed 'Waiver of Right to Hearing' form and our cashier's check in the amount of \$9,000, which represents the amount of the proposed fines.

We acknowledge that the effluent violations, which are the subject of this complaint, did occur and were promptly reported by us, as required by our NPDES permit monitoring program. We also understand that the Regional Board and its staff have little discretion in the issuance of these types of complaints and the mandatory fines provided for under the current State law. We, nevertheless, feel compelled to comment on the appropriateness of the Mandatory Minimum Penalty program and its applicability to dischargers such as ourselves that have maintained an enviable record of compliance over a long period of years. We believe that this law was inappropriately drafted and should be modified to be applicable to grievous violations which clearly endanger the ocean environment. We further believe that the Regional Board should have some latitude in the issuance of penalties, depending on the circumstances, the nature of the violation, and the history of the discharger's compliance efforts.

In this particular instance, the southern part of Orange County, which constitutes our service area, received an extraordinarily high 5.83 inches of rain in the three day period from January 8th through the 11th. The area was declared a national

disaster area, and significant public infrastructure improvements in San Juan Capistrano and elsewhere, including some of our own road facilities, were seriously damaged as a result of these storms. Our various SOCWA and member agency treatment plants tributary to the San Juan Creek Ocean Outfall experienced very high peak flows for extended periods of time, thereby reducing detention time and impacting the secondary treatment process. We believe that under these circumstances it is completely understandable that effluent violations of the type we experienced would occur on a limited basis. We also believe that such violations had virtually no impact on the ocean environment at Doheny Beach, which experienced temporary but significant damage due to enormous urban runoff flows in San Juan Creek during this storm period. The beach and nearshore ocean environment was, frankly, a murky mess for several days following the heavy rains, and swimmers were cautioned both before and long after our single-day effluent violations not to swim in the water. The imposition of fines under this set of circumstances seems almost ludicrous and certainly unnecessary. A modification of the pertinent Water Code provisions to account for this type of situation certainly seems warranted. We believe it would be appropriate not only for dischargers such as ourselves but also for the Regional Board and its staff to work to modify the provisions of the Water Code to make them more relevant and appropriate to the circumstances. We would hope that you would work with us in the future to do so.

While we have submitted the Waiver form and check with this correspondence, we would request that the Regional Board consider approving a Supplemental Environmental Project for a portion of the fine imposed under this ACL. We believe that a SEP, which would retain a portion of the funds in South Orange County for some worthwhile project, would be far more beneficial in the long run than the direct payment of a fine. We have spoken to Mr. Mark Alpert of your office about this issue, and he suggested this letter as a way of first broaching the subject of an SEP. We have not given much thought at this point to a particular project, but several possible projects come to mind, including:

1. Watershed Education Center (City of Laguna Niguel, with SOCWA member donations)
2. Doheny Beach Epidemiological study (City of Dana Point)
3. Wood Canyon Restoration project (City of Aliso Viejo)
4. Arundo removal in Aliso or San Juan Creek Watershed (County of Orange-Team Arundo)
5. Interpretive Sign project in Aliso and Wood Canyons Wilderness Park (County of Orange/BSA)
6. Additional funding for the Doheny Interpretive Center (Doheny State Beach)

We have not pursued any of these projects directly; however, we would certainly be willing to work with your staff to select one of these projects or some other worthy project where a small contribution like this might help make a difference.

We would appreciate it if you would give the concept of a SEP your consideration under the subject ACL.

We thank you for your consideration of the above issues. Please do not hesitate to contact me if you have questions or require further clarification.

Very truly yours,

SOUTH ORANGE COUNTY WASTEWATER AUTHORITY

A handwritten signature in cursive script, appearing to read "David A. Caretto".

David A. Caretto
General Manager

Enclosures

cc: SOCWA PC 5 Board of Directors
Pat Giannone, Bowie, Arneson, Wiles & Giannone
Tom Rosales, SOCWA